

## BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p style="text-align: center;"><b>Charles and Jewel Pentz Steve Pentz</b></p> <p style="text-align: center;"><b>RESPONDENTS</b></p>	<p style="text-align: center;"><b>ORDER FORBIDDING USE OF WATER</b></p> <p style="text-align: center;">SEAA No. 2163</p> <p style="text-align: center;">DISTRIBUTION ACCOUNT: 103309 WATER RIGHTS: 35-8275 35-444</p>
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### **I. STATEMENT OF LAW AND JURISDICTION**

1. The Division of Water Rights (“Division”) issues this Order Forbidding Use of Water (“Order”) under UTAH CODE ANN. § 73-5-4. This Order is exempt from the Utah Administrative Procedures Act in accord with UTAH CODE ANN. Subsection 63G-4-102(2).
2. The State Engineer, as the director of the Division, is charged with the general administrative responsibility over the waters of the State. UTAH CODE ANN. § 73-2-1.
3. The Division administers the waters of the state under the direction of the State Engineer. UTAH CODE ANN. §§ 73-2-1 and 73-2-1.1.
4. The State Engineer is authorized to enact rules governing water distribution systems, water commissioners, water measurement and reporting that are consistent with UTAH CODE ANN. Chapter 73-5, “Administration and Distribution.” UTAH CODE ANN. § 73-2-1(5)(a) and 73-2-1(5)(b).
5. “Distribution Order” means an Order of the State Engineer interpreting the water rights included within a Distribution System, confirming priorities of water rights, giving instruction or direction regarding the regulation, distribution, and/or measurement of water based on those water rights, and may order the installation or repair of measuring devices, head gates, and control structures as authorized by UTAH CODE ANN. Chapter 73-5. Distribution Orders are enforceable under the provisions of UTAH CODE ANN. §§ 73-2-25 and 73-2-26. UTAH ADMIN. CODE R. 655-15-4 (e).
6. “Enforcement Tag” means an orange tag attached by a water commissioner to or near a control structure or water measuring device in situations where the water user is ordered

to comply with the water commissioner's regulation and distribution of water. An enforcement tag constitutes a distribution order and is enforceable in the same manner. UTAH ADMIN. CODE R. 655-15-4 (j).

7. "Point(s) of Diversion" means that location or locations where water is delivered and regulated to the water user in the Distribution System; which point(s) is associated with a Distribution Account. The Distribution Account holder of record is deemed to be the current water user at the Point(s) of Diversion.
8. "Respondent" means any person to whom the Division issues a Notice or Order pursuant to authority granted under UTAH CODE ANN. Chapter 73-5.
9. "Violation," as used in this Order, means any action taken by the Respondent, the Respondent's agent, or any person acting under the direction or authority of the Respondent, intended to circumvent or avoid the restrictions on water use ordered herein. Such action may include but is not limited to removal or alteration of an Enforcement Tag placed by a duly appointed official of the Division.
10. UTAH CODE ANN. § 73-5-4 (6) states in part: *If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:*
  - (a) *forbid the use of water until the user complies with the state engineer's requirement; and*
  - (b) *commence enforcement proceedings authorized by Section 73-2-25..*
11. This Order constitutes a Distribution Order in accord with the provisions of UTAH ADMIN. CODE R655-15-4.
12. UTAH CODE ANN. § 73-2-25 states, in part: *The state engineer may commence an enforcement action under this section if the state engineer finds that a person violates a written distribution order from the state engineer.*

## **II. STATEMENT OF FACTS**

1. The Respondent is the person or persons who divert water from Lost Creek at diversions known as the Pentz Pump and Pentz Ditch under Weber River Distribution Account 103309.
2. On June 26, 2019 a Measuring Device and Control Structure Notice ("Notice") was mailed to the Respondent at the address of record.

3. The Notices recited certain facts pertaining to water control structures and water measuring devices at specified Point(s) of Diversion and/or Regulation of Respondents deliveries, which facts are herewith incorporated into this Order.
4. The Notice directed the Respondent to correct certain deficiencies associated with the facilities to measure and/or regulate water at the Point(s) of Diversion within a specified number of days.
5. The Notice informed the Respondent that if the required deficiencies were not corrected within the time allowed, the Division would issue an Order Forbidding the Use of Water until the corrections were made.
6. An inspection of the control/measurement facilities at the Point(s) of Diversion was conducted on July 10, 2019, and Respondent was given specific instructions on how to prepare for the water meter installation.
7. As of the date of this Order, the Respondent has not corrected the deficiencies associated with the facilities used to control and/or measure water at the Point(s) of Diversion as directed in the Notice.

### **III. ORDER**

On the grounds and for the reasons summarized herein, and pursuant to the authority of UTAH CODE ANN. §73-5-4, the Respondent is hereby ordered to comply with the following requirements:

1. The Respondent is hereby **ORDERED TO CEASE THE USE OF WATER** at the Point(s) of Diversion as described in the Notice and as described in the water rights listed above. UTAH CODE ANN. Subsections 73-5-4(5)(a) and 73-5-9(3).
2. This ORDER shall remain in effect until the deficiencies in the control and/or measurement devices at the Point(s) of Diversion and other locations as described in the Notice have been resolved.
4. Before attempting to take any water at the Point(s) of Diversion, the Respondent shall advise the Water Commissioner of having complied with the requirements of the Notice.
5. The Water Commissioner shall confirm satisfactory compliance with the Notice before any water is distributed at the Point(s) of Diversion described in the Notice.

#### **IV. ADDITIONAL AGENCY ACTION**

1. If there is a violation of this Order, as defined herein, the Division may commence an enforcement action in accordance with UTAH CODE ANN. § 73-2-25.
2. If determined to be in violation of this Order, the Respondent will be subject to administrative penalties in accordance with UTAH CODE ANN. § 73-2-26, including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations, and for replacement of up to 200% of water taken in violation of the Order. In addition, the Respondent may be liable for reimbursement of all expenses incurred by the Division in investigating and stopping the violation.

#### **V. RESPONDENT PARTICIPATION**

1. To participate in this proceeding, you must comply with each and all of the requirements listed in Section III. ORDER, herein, *or*:
2. Submit *written* information and evidence documenting that the Respondent named is neither the party owning the captioned water right nor the holder of the referenced Distribution Account.
  - a. The *written* information must provide facts supporting the Respondent's allegations or defenses and must identify the party to whom water right ownership and Distribution Account responsibility was transferred; and
  - b. Must be received by the Division **within fourteen (14) days of the date of this Order.**

#### **VI. RESPONDENT FILINGS**

All Respondent's filings concerning this action, whether to document compliance with the Order or to provide information and evidence, shall be directed to the Division. Such filings shall reference the SEAA number noted herein and may be submitted in either of two ways:

1. Filings submitted *only* by mail must be ***received*** in the office of the State Engineer by the designated due date. All filings submitted by mail should be directed to:

Division of Water Rights  
Attn: Ben Anderson, P.E., Distribution Engineer  
1594 West North Temple St, Suite 220

PO Box 146300  
Salt Lake City, UT 84114-6300

2. Filings submitted by email or by facsimile transmission (fax) must be addressed for mailing and must be ***received*** in the office of the State Engineer by the designated due date. Email: [benanderson@utah.gov](mailto:benanderson@utah.gov) Fax: **(801) 538-7467**

**The signed original documents must also be submitted to the Division by regular mail using the address information above. The signed original documents must be *postmarked* no later than the designated due date.**

## **VII. FURTHER INFORMATION**


Questions concerning this ORDER should be referred to:

Michael Drake, P.E.  
*Regional Engineer*  
*Weber River Office/Western Region*  
*Utah Division of Water Rights*  
*1594 W North Temple Ste 220*  
*Salt Lake City, UT 84114-6300*  
*(801) 538-7240*

or

Ben Anderson, P.E.  
*Water Rights Distribution Engineer*  
*Utah Division of Water Rights*  
*1594 W North Temple Ste 220*  
*Salt Lake City, UT 84114-6300*  
*(801) 538-7240*

Dated this 14<sup>th</sup> day of August, 2019

  
Ben Anderson, P.E.  
Distribution Engineer

## CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 14<sup>th</sup> day of August, 2019, I mailed a copy of the foregoing Order by U.S. Priority Mail Service, Delivery Confirmation requested, to the following:

Steve Pentz  
PO BOX 1001  
Morgan, UT 84050

Charles and Jewel Pentz  
1885 North 6800 East  
Croydon, UT 84018

Kelly Horne  
Kelly Horne  
Division of Water Rights  
Field Services Secretary

cc: Michael Drake, Regional Engineer  
Cole Panter, Weber River Water Commissioner

7002 0510 0002 2228 3792

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
Sent To	Steve Pentz
Street, Apt. No., or PO Box No.	PO BOX 1001
City, State, ZIP+4	Morgan, UT 84050
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	

PS Form 3800, January 2001

See Reverse for Instructions

7002 0510 0002 2228 3785

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
Sent To	Charles and Jewel Pentz
Street, Apt. No., or PO Box No.	1885 North 6800 East
City, State, ZIP+4	Croydon, UT 84018
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	

PS Form 3800, January 2001

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